

1 ERSKINE & TULLEY  
A PROFESSIONAL CORPORATION  
2 MICHAEL J. CARROLL (ST. BAR #50246)  
220 MONTGOMERY STREET, SUITE 303  
3 SAN FRANCISCO, CA 94104  
TELEPHONE: (415) 392-5431  
4 FACSIMILE: (415) 392-1978

5 ATTORNEYS FOR PLAINTIFFS  
6  
7

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10

11 BOARD OF TRUSTEES OF THE SHEET	)	NO. C 08 0306 BZ
METAL WORKERS, et al.,	)	
	)	
Plaintiffs,	)	
	)	DECLARATION OF
vs.	)	MICHAEL J. CARROLL
	)	IN SUPPORT OF MOTION
C R SCHELLENGER H V A C INC.,	)	<u>FOR DEFAULT JUDGMENT</u>
etc.,	)	
Defendant.	)	
_____	)	

17  
18 I, MICHAEL J. CARROLL, declare:

19 1. I am one of the attorneys for plaintiffs in this  
20 action and if called as a witness, I could competently testify to  
21 the following facts:

22 2. Plaintiffs have incurred costs in the amount of  
23 \$500.00 in the prosecution of this action. This figure consists  
24 of the following items:

- 25 a. The filing fee of \$350.00; and  
26 b. The cost to effect service of the Summons and  
27 Complaint and other documents from the initial  
28 filing of this case in the amount of \$150.00,

1 which I have paid.

2 Attached as Exhibit 5 is the invoice for item b. above.

3 3. This office commenced work on this employer's  
4 delinquency in December 2007 under the delinquency procedures  
5 established by the trust funds. Demand for payment was made by me  
6 by telephone contact with Alex Schellenger on December 19, 2007.

7 4. This legal action was filed on January 16, 2008.  
8 Defendant failed to appear and defendant's default was entered by  
9 the Court on March 27, 2008. The Court's jurisdiction is founded  
10 on 29 U.S.C. § 185(a) and 29 U.S.C. 1132.

11 5. Declarant has expended in excess of 3 hours in the  
12 prosecution of this action, including the preparation of an ExParte  
13 Application with Supporting Declaration to Continue the Case  
14 Management Conference, a Motion for Entry of Default with  
15 Supporting Declaration, and this motion. Erskine & Tulley's  
16 billing rate in this matter is \$185.00 per hour for a total of  
17 \$555.00.

18 6. Exhibit 2 to the Maraia Declaration is the  
19 Declaration of Trust as amended of the Pension Trust; all other  
20 trusts contain the same provisions for court costs and attorneys  
21 fees, see pages 12-13.

22 7. The applicable interest rate is 15%. The Trust  
23 Agreement, Exhibit 2, states at page 9 that "... both the  
24 contribution and the liquidated damages attributable thereto shall  
25 bear interest at a rate to be determined from time to time by  
26 resolution of the Board..."

27 8. Attached hereto as Exhibit 6 are excerpts from the  
28 Ways & Means Committee Meeting of May 1, 2001 when the trustees

1 readopted the 15% rate that they have had since the 1980's. I was  
2 present at this meeting and the minutes accurately reflect what  
3 occurred. On June 1, 2001 the full board approved the action taken  
4 on May 1<sup>st</sup> in committee. I was present at that meeting as well.

5 9. ERISA provides that a judgment on behalf of a  
6 fiduciary for unpaid contributions to a multiemployer plan shall  
7 include interest on the unpaid contributions, and the interest "...  
8 shall be determined by using the rate provided under the plan ..."  
9 29 U.S.C. 1132 (g) (2). The award is mandatory. Paragraph (2)  
10 states that the Court shall award the plan interest. See Laborers  
11 Clean-Up Contract v. Uriarte Clean-Up Service 736 F.2d 516, 522  
12 (9th.Cir.1984).

13 10. In this case interest has only been calculated on  
14 the unpaid contributions. Higher rates of interest have been  
15 awarded in other cases notwithstanding the argument that the rate  
16 set by the trustees constituted a penalty. Iron Workers District  
17 Council v. Hudson Steel Fabricators 68 F.3d 1502 (2nd. Cir. 1995).  
18 See cases listed on page 1508.

19 I declare under penalty of perjury that the foregoing is  
20 true and correct.

21 Executed on July 8, 2008 at San Francisco, California.

22 /s/ Michael J. Carroll  
MICHAEL J. CARROLL  
23  
24  
25  
26  
27  
28

**JIM STACK PROCESS SERVERS****WE DO WRITS RIGHT!****P.O. BOX 716****MILLBRAE, CA 94030****650-589-6663 FAX 650-589-6157****BDNUS@AOL.COM JIMSTACKPROCESSSERVERS.COM**

TAX ID NO:

94-1671497

INVOICE DATE : 3/4/2008

INVOICE NUMBER :

**24634**

**Client:** ERSKINE & TULLEY, A PROFESSIONAL CORPORATION  
**Attention:** MICHAEL J. CARROLL, ESQ #50246  
**Address:** 220 MONTGOMERY ST., STE 303  
SAN FRANCISCO, CA 94104

**Phone:** 415-392-5431 **Fax:**  
**Client's#** CR SCHELLENGER Acct:1879

**Documents Served:**☐ Summons ☐ Complaint ☐ ADR ☐ CCCS ☐ Cross**1.** SEE ATTACHMENT TO PROOF OF SERVICE**3.X****4.X****5.X****Case Title :** BOARD OF TRUSTEES -V- C R SCHELLENGER**Case Number:** C 08 0306 BZ**Date Filed :****Court of Record Name/Address:**

UNITED STATES DISTRICT COURT NORTHERN  
, CA

**Hrng. Date:**

**PARTY TO BE SERVED:** C R SCHELLENGER H V A C INC., A CALIFORNIA CORPORATION DOING BUSINESS AS CRS HVAC  
INC. - ALEX SCHELLENGER, OWNER

**ADDRESS #1. :**

**ADDRESS #2. :** 1030 MAIN ST., HELENA CA 94574

**PARTY SERVED: (same as above if blank)****Name & Description:** CONNIE SCHELLENGER, SPOUSE OF OWNER/EMPLOYEE**DATE/TIME:** 2/6/2008 2:02PM☐ Multiple Parties**SERVICE LOCATION:** 1030 MAIN ST., HELENA CA 94574

SERVICES	CHARGES	BAD ADDRESS(es) (none if blank):	
FEE FOR SERVICE	\$150.00	Attempts: Loc./Date/Time	Not Served at address given : Other:
			<i>paid</i>
		MISC.:	
<b>TOTAL CHARGES:</b>	\$150.00	<b>TOTAL PAID:</b>	\$0.00
		<b>TOTAL DUE:</b>	\$150.00

MICHAEL J. CARROLL, ESQ #502  
 ERSKINE & TULLEY, A PROFESSIONAL CORPORATION  
 220 MONTGOMERY ST., STE 303  
 SAN FRANCISCO CA 94104  
 415-392-5431 415-392-1978

UNITED STATES DISTRICT COURT  
 UNITED STATES DISTRICT COURT OF CALIFORNIA

BOARD OF TRUSTEES

Plaintiff(s):

CASE NUMBER:

C 08 0306 BZ

v.

C R SCHELLENGER, ET AL.

Defendant(s):

**PROOF OF SERVICE  
 SUMMONS AND COMPLAINT**

(Use separate proof of service for each person/party served)

1. At the time of service I was at least 18 years of age and not a party to this action and I served copies of the (specify documents):

- a. ☐ summons ☐ complaint ☐ alias summons ☐ first amended complaint  
☐ second amended complaint  
☐ third amended complain

☒ other (specify): SEE ATTACHMENT TO PROOF OF SERVICE

2. Person served:

- a. ☒ Defendant (name): C R SCHELLENGER H V A C INC., A CALIFORNIA CORPORATION DOING BUSINESS  
 b. ☒ Other (specify name and title or relationship to the party/business named): AS CRS HVAC INC. ALEX SCHELLENGER: OWNER  
 CONNIE SCHELLENGER, SPOUSE OF OWNER/EMPLOYEE  
 c. ☒ Address where papers were served:  
 1030 MAIN ST., HELENA CA 94574

3. Manner of Service in compliance with (the appropriate box **must** be checked):

- a. ☒ Federal Rules of Civil Procedure  
 b. ☐ California Code of Civil Procedure

4. I served the person named in Item 2:

- a. ☐ By Personal service. By personally delivering copies. If the person is a minor, by leaving copies with a parent, guardian, conservator or similar fiduciary and to the minor if at least twelve (12) years of age.  
 1. ☐ Papers were served on (date): \_\_\_\_\_ at (time): \_\_\_\_\_  
 b. ☒ By Substituted service. By leaving copies:  
 1. ☐ (home) at the dwelling house, usual place of abode, or usual place of business of the person served in the presence of a competent member of the household, at least 18 years of age, who was informed of the general nature of the papers.  
 2. ☒ (business) or a person apparently in charge of the office of place of business, at least 18 years of age, who was informed of the general nature of the papers.  
 3. ☒ Papers were served on (date): 2/6/2008 at (time): 2:02PM  
 4. ☒ by mailing (by first-class mail, postage prepaid) copies to the person served in Item 2(b) at the place where the copies were left in Item 2(c).  
 5. ☒ papers were mailed on (date): 02/06/08  
 6. ☐ due diligence. I made at least three (3) attempts to personally serve the defendant.

- c. ☐ **Mail and acknowledgment of service.** By mailing (*by first-class mail or airmail, postage prepaid*) copies to the person served, with two (2) copies of the form of Waiver of Service of Summons and Complaint and a return envelope, postage prepaid addressed to the sender. (**Attach completed Waiver of Service of Summons and Complaint**).
- d. ☐ **Service on domestic corporation, unincorporated association (including partnership), or public entity. (F.R.Civ.P. 4(h)) (C.C.P. 416.10)** By delivering, during usual business hours, a copy of the summons and complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute and the statute so requires, by also mailing, by first-class mail, postage prepaid, a copy to the defendant.
- e. ☐ **Substituted service on domestic corporation, unincorporated association (including partnership), or public entity. (C.C.P. 415.20 only)** By leaving during usual office hours, a copy of the summons and complaint in the office of the person served with the person who apparently was in charge and thereafter by mailing (*by first-class mail, postage prepaid*) copies to the persons at the place where the copies were left in full compliance with C.C.P. 415.20. Substitute service upon the California Secretary of State requires a court order. (**Attach a copy of the order to this Proof of Service**).
- f. ☐ **Service on a foreign corporation.** In any manner prescribed for individuals by FRCP 4(f).
- g. ☐ **Certified or registered mail service.** By mailing to an address outside California (*by first-class mail, postage prepaid, requiring a return receipt*) copies to the person served. (**Attach signed return receipt or other evidence of actual receipt by the person served**).
- h. ☐ **Other** (specify code section and type of service):

5. Service upon the United States, and Its Agencies, Corporations or Officers.

- a. ☐ by delivering a copy of the summons and complaint to the clerical employee designated by the U.S. Attorney authorized to accept service, pursuant to the procedures for the Office of the U.S. Attorney for acceptance of service, or by sending a copy of the summons and complaint by registered or certified mail addressed to the civil process clerk at the U.S. Attorneys Office.

Name of person served:

Title of person served:

Date and time of service: (date): \_\_\_\_\_ at (time): \_\_\_\_\_

- b. ☐ By sending a copy of the summons and complaint by registered or certified mail to the Attorney General of the United States at Washington, D.C. (**Attach signed return receipt or other evidence of actual receipt by the person served**).
- c. ☐ By sending a copy of the summons and complaint by registered or certified mail to the officer, agency or corporation (**Attach signed return receipt or other evidence of actual receipt by the person served**).

6. At the time of service I was at least 18 years of age and not a party to this action.

7. Person serving (name, address and telephone number):



JIM STACK PROCESS SERVERS  
P.O. BOX 716  
MILLBRAE, CA 94030  
650-589-6663 #21 SAN MATEO CO.

a. Fee for service: \$ 150.00

- b. ☐ Not a registered California process server
- c. ☐ Exempt from registration under B&P 22350(b)
- d. ☒ Registered California process server

8. ☐ I am a California sheriff, marshal, or constable and I certify that the foregoing is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Date: 3-4-08

PP#: 24467

SHANNON L. ROUSE  
NAPA CO #52804

(Signature)

CV-1 (04/01)

PROOF OF SERVICE - SUMMONS AND COMPLAINT

EES -V- C R SCHELLENGER H V A C INC.

PAGE 2

ATTACHMENT

Re: Board of Trustees of the Sheet Metal Workers , et al.  
vs. C R Schelleghner H V A C Inc., a California corporation doing  
business as CRS H V A C INC.,  
United States District Court, Action No. C 08 0306 BZ

DOCUMENTS TO BE SERVED:

1. SUMMONS
2. COMPLAINT
3. U.S. DISTRICT COURT NORTHERN CALIFORNIA - ECF  
REGISTRATION INFORMATION HANDOUT
4. WELCOME TO THE U.S. DISTRICT COURT
5. ORDER SETTING INITIAL CASE MANAGEMENT CONFERENCE  
AND ADR DEADLINES
6. STANDING ORDERS
7. STANDING ORDER FOR ALL JUDGES OF THE NORTHERN  
DISTRICT OF CALIFORNIA/ CONTENTS OF JOINT CASE  
MANAGEMENT STATEMENT
8. NOTICE OF AVAILABILITY OF MAGISTRATE JUDGE TO  
EXERCISE JURISDICTION
9. CONSENT TO PROCEED BEFORE A UNITED STATES  
MAGISTRATE JUDGE
10. SUPPLEMENTAL CASE MANAGEMENT STATEMENT AND  
PROPOSED ORDER
11. JOINT CASE MANAGEMENT STATEMENT AND PROPOSED  
ORDER
12. DISPUTE RESOLUTION PROCEDURES IN THE NORTHERN  
DISTRICT OF CALIFORNIA

**SHEET METAL WORKERS OF NORTHERN CALIFORNIA PENSION PLAN  
WAYS AND MEANS COMMITTEE**

A meeting of the Ways & Means Committee was held on May 1, 2001 in Alameda, CA.

Trustees present:	Tony Asher, Chairman	Bruce Word, Co-Chairman
	Jim Conway	Duane Turner
		Tranquilino Castro
		Tony Ledoux

Also present were: Chuck Givens, Labor Trustee, Dick Grosboll and Mike Terrizzi, Legal Counsel; Michael Carroll, Collection Counsel; Sid Kaufmann, Actuary, Kim Ray and Sally Pearce, Auditors; Don Hutchinson, Investment Advisor; Mike McCormick and Rachelle Jones, Fund Managers.

Absent was: Mark Bowers.

**1. MINUTES**

A motion was made, seconded and adopted approving the minutes of the January 19, 2001 Ways & Means Committee meeting.

**2. LEGAL COUNSEL EXECUTIVE SESSION – LITIGATION STATUS REPORT**

At Legal Counsel's request, the Chair called an executive session to review a litigation matter.

**3. FINANCIAL STATEMENTS**

The Trustees reviewed and approved the monthly financial statement through February 2001, and all payments made since the last meeting.

**4. DELINQUENCY REPORT**

The Trustees reviewed the combined Delinquency report with Collection Counsel's notes.

**5. COLLECTION COUNSEL REPORT**



Collection Counsel reminded the Trustees that the interest rate adopted by the Trustees on delinquent contributions back in the 1980's was 15% per annum. After some discussion a **motion was made, seconded and adopted** to continue to continue to charge 15% interest per annum on delinquent contributions.

6. **AUDITOR'S REPORT**

- a. **Draft Reports Ready to Process:** A motion was made, seconded and adopted to approve and process the following Employer reports, and authorizing the Trust Fund to review any overpayments found during the audit to determine whether the employer can take a credit on any payments due:

- Aaero Heating & Sheet Metal Company, #01740/666
- A.T.S. Products, # 09840/371, 09841/371

- d. **Meeting Date Change:** A motion was made, seconded and adopted to change the meeting date for the next Board of Trustees meeting to Friday, June 15, 2001.
- e. **Administrative Fees:** A motion was made, seconded and adopted to recommend to the Board of Trustees approval of ATPA's fee request consideration effective January 1, 2001 from \$8.25 to \$9.75 per reported Active and Retiree per month.

The meeting adjourned. The next meeting is scheduled for Tuesday, August 7<sup>th</sup> at ATPA.

Respectfully submitted,



Rachelle Jones  
Fund Manager